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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MCI WORLDCOM , INC.	)	CC Docket No. 00-45
	)	
Petition for Expedited Declaratory Ruling	)	
Regarding the Process for Adoption of Agreements	)	
Pursuant to Section 252(i) of the Communications	)	
Act and Section 51.809 of the Commission's Rules	)	

To: The Commission

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA") hereby replies to the comments filed with respect to the captioned Petition for Expedited Declaratory Ruling (the "Petition") filed by MCI Worldcom, Inc. ("MCI"). PCIA respectfully submits that the comments filed demonstrate that prompt, decisive Commission action preserving carriers' rights under Section 252(i) of the Communications Act of 1934, as amended (the "Act") is essential.

MCI's Petition is strongly supported. Nearly all of the carriers filing comments on the Petition supported it wholeheartedly.[1/] Indeed, even the various state commissions that submitted comments on the Petition agreed that uniform rules or guidelines are necessary to

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1/ The only dissenting carriers were the three Regional Bell Operating Companies ("RBOCs") who submitted comments. *See*, Comments of BellSouth Corporation, Bell Atlantic and SBC Communications, Inc. The RBOCs are precisely the carriers who have benefitted from uncertainties surrounding the exercise of Section 252(i) rights.

assist carriers in the realization of their Section 252(i) rights.[2/] In light of the overwhelming support for FCC action in this regard, PCIA respectfully requests that the Commission act promptly to grant the relief MCI seeks.

PCIA observes that many of the arguments raised by the three RBOCs opposing MCI's Petition relate directly to the MCI Petition, and have been addressed and effectively rebutted in comments supporting MCI's request. PCIA therefore will not reiterate those arguments herein.

However, SBC's opposition to the Petition raises one argument that PCIA does not believe was directly presented by the MCI Petition. Specifically, SBC argues that reciprocal compensation provisions of previously-approved agreements should not be subject to adoption pursuant to Section 252(i). Ameritech raised this same argument in an earlier proceeding, and PCIA opposed Ameritech's argument.[3/] As SBC's argument does not differ from that raised by Ameritech, PCIA hereby incorporates by reference its reply comments filed in CC Docket Nos. 96-98 and 99-68.[4/] Briefly, PCIA's reply comments demonstrate that the Section 252(i) adoption process was intended to encompass reciprocal compensation; otherwise the goal of Section 252(i) – the prompt arrival at fair interconnection arrangements – could not be achieved. PCIA's earlier pleading also reflects that the costs relevant to Section 252(i) are the costs to the incumbent LEC of providing the interconnection, service or network element to the

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2/ *See*, Comments of the Indiana Utility Regulatory Commission, Public Utility Commission of Texas, Public Service Commission of Wisconsin, and the Telecommunications Regulatory Board of Puerto Rico.

3/ *See,* Reply Comments of the Personal Communications Industry Association, CC Docket Nos. 96-98 and 99-68, filed April 27, 1999, pp. 4-5.

4/ A copy of PCIA's Reply Comments is attached hereto.

requesting carrier pursuant to Section 252(i). Based upon the foregoing, SBC's argument must be rejected.

WHEREFORE, the foregoing having been duly considered, PCIA respectfully submits that the Commission should grant MCI's Petition and issue the declaratory rulings sought therein.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION

By: Robert L Hoggarth

Robert L. Hoggarth, Esq.
Senior Vice President, Government Regulations
Angela E. Giancarlo, Esq.
Director, Federal Regulatory Affairs
Personal Communications Industry Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314
(703) 739-0300

Attachment
April 11, 2000

ATTACHMENT

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Inter-Carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

To: The Commission

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA") hereby submits these Reply Comments in the captioned proceeding. In its Comments, PCIA urged the Commission to adopt flexible rules governing the nature and extent of telecommunications carriers' rights under Section 252(i) of the Communications Act, as amended (the "Act"). PCIA supported a flexible approach in light of the critical role Section 252(i) plays in interconnection negotiations by preventing discrimination among all types of carriers and evening the bargaining power between incumbent local exchange carriers ("ILECs") and other telecommunications carriers.

Several other commenters also conveyed the importance of Section 252(i) to the

negotiation process.[1/] These commenters represent the vast majority of non-ILEC parties who addressed this issue. In light of the broad recognition of the significant role of Section 252(i) in reaching fair interconnection agreements, PCIA reiterates its request that the Commission adopt flexible rules governing the exercise of these important rights so that they can remain the effective tool envisioned by Congress.

PCIA limits the substance of these Reply Comments to a single argument asserted by a sole commenter which misinterprets the meaning and severely limits the rights conferred by Section 252(i). Ameritech argues that Section 252(i) does not apply to reciprocal compensation because "it is not interconnection; it is not a service provided by an incumbent LEC; and it is not a network element."[2/] This argument is without merit and the Commission must recognize it as such.

Section 252(i) requires that LECs make available any interconnection, service or network element contained in a previously approved agreement on the same terms and conditions as the original agreement.[3/] While reciprocal compensation provisions are not a type of interconnection (*e.g.*, like end-office or tandem interconnection) they *are* a term or condition of interconnection. The existence of the interconnection arrangement is what permits traffic to be transferred from one network to another. The amount each carrier charges for its transport and

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1/ *See*, Comments of AirTouch Paging, pp. 3-6; Association for Local Telecommunications Services, pp. 19-22; CompTel, pp. 16-17; GST Telecom, p. 21-24; MCI Worldcom, pp. 20-22. PCIA notes that the AirTouch Paging Comments raise some additional issues with respect to Section 252(i) which PCIA believes warrant further consideration.

2/ Ameritech Comments, p. 22.

3/ 47 U.S.C. § 252(i).

termination of that traffic pursuant to agreement is an integral factor in that interconnection arrangement -- one over which parties enthusiastically negotiate in the context of interconnection agreements. Thus, because it is inextricably linked to the interconnection arrangement, a reciprocal compensation provision is a term of that arrangement.

The inclusion of reciprocal compensation provisions within the scope of Section 252(i) is apparent from the *Local Competition First Report*.[4/] The portion of the order discussing Section 252(i) and adopting Section 51.809 of the rules[5/] reflects that the Commission has interpreted Section 252(i) as permitting the adoption of any provision within a previously approved agreement *or the adoption of the agreement in its entirety*.[6/] By this all-inclusive interpretation, the Commission intended that all provisions of an interconnection agreement, including those pertaining to reciprocal compensation, would be subject to the rights conferred by Section 252(i). The right to adopt an interconnection agreement *in toto* was upheld both at the Eighth Circuit and the Supreme Court.[7/] Neither the Eighth Circuit nor the Supreme Court indicated that any specific sections of interconnection agreements should be excluded from the scope of the rights granted by Section 252(i).[8/]

4/ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 15,499 (1996).

5/ 47 C.F.R. §51.809.

6/ *Id.*, paras. 1309-1323.

7/ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *modified on rehearing*, Slip. Op. (8th Cir., Oct. 14, 1997); *aff'd in part and rev'd in part, AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

8/ Indeed, both courts noted their belief that the adoption of *all of the provisions* of a previously approved agreement may be the most fair to parties, who may have agreed to concede

In fact, the right to adopt a previously approved agreement *in toto* was precisely what the ILECs advocated. Both before this Commission and the two courts hearing the appeals of the *Local Competition First Report*, ILECs, *including Ameritech*, argued that carriers seeking to exercise their rights under Section 252(i) were required to adopt the entire underlying agreement without modification.[9/] The ILECs argued that this was the only interpretation of Section 252(i) that was fair in light of *quid pro quo* type concessions made in the course of agreement negotiations. The ILECs did not exclude any agreement provisions, including reciprocal compensation, from this argument. PCIA respectfully submits that Ameritech cannot have it both ways. The Commission must not permit Ameritech to argue that agreements must be adopted *in toto* because "pick and choose" is unfair and later engage in a "pick and choose" of its own with respect to reciprocal compensation.

Ameritech next asserts that Section 252(i) does not apply to reciprocal compensation provisions because different carriers have differing costs.[10/] This position is contrary to both the plain language and spirit of the statute. The fact that carriers adopting a previously approved agreement may have different costs than the original carrier is irrelevant. Carriers are not likely to have identical costs, especially in the context of a competitive environment where carriers constantly are striving to reduce costs and increase efficiency. Even

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on one issue in exchange for the other party's concession on another issue. *Iowa Utils. Bd. v. FCC*, 120 F. 3d at 801; *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. at 738.

9/ *See*, Comments filed in CC Docket 96-98 by Ameritech, pp. 98-99; BellSouth, p. 81; Bay Springs, et. al., p. 19; GTE, p. 83; SBC, p. 24; USTA, p. 96-97; *see also, FCC v. Iowa Utils. Bd.*, Case No. 97-831, *consolidated with AT&T v. Iowa Utils. Bd., supra.*

10/ Ameritech Comments, p. 24.

so, in an effort to foster telecommunications carriers' ability to reach fair interconnection agreements with LECs, Congress passed Section 252(i) which permits carriers to adopt provisions of agreements or entire agreements previously approved between a LEC and another carrier. The statute does not require that the requesting carrier have identical or equal costs to those of the carrier to the underlying agreement. To impose such a requirement would effectively nullify Section 252(i).

Ameritech also asserts that carriers with different costs should not receive identical reciprocal compensation payments.[11/] However, the Commission already has addressed this issue in the adoption of proxy and symmetrical rates. In the interest of fostering fair interconnection agreements in a timely fashion, the FCC has approved the use of proxy and symmetrical rates as an alternative to individualized rates demonstrated in the course of cost proceedings or by cost studies. The idea that Section 252(i), enacted with the intent of fostering fair agreements on an expedited basis, would not also entail the adoption of compensation rates outside of the scope of a cost proceeding or cost study is contrary to the intent of the provision.

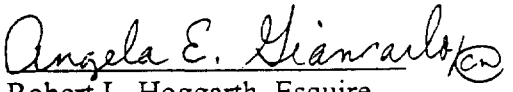
In sum, Ameritech's argument misinterprets the language and intent of Section 252(i), ignores Commission and court rulings on the scope of the rights conferred thereby, and would eviscerate the protections granted thereby. PCIA respectfully requests that the Commission reject Ameritech's argument and confirm that *all* provisions of previously approved interconnection agreements, including those pertaining to reciprocal compensation and inter-carrier compensation, are subject to the rights granted by Section 252(i).

11/ *Id.*

WHEREFORE, the foregoing having been duly considered, PCIA respectfully requests that the Commission adopt rules consistent with the positions contained in these Reply Comments.

Respectfully submitted,

PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION



Robert L. Hoggarth, Esquire
Senior Vice President - Paging and Messaging
Angela E. Giancarlo, Esquire
Director, Federal Regulatory Affairs
Personal Communications Industry Association
500 Montgomery Street; Suite 700
Alexandria, VA 22314-1561
(703) 739-0300

April 27, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of April, 2000 caused a true and correct copy of the Reply Comments of the Personal Communications Industry Association to be sent *via* first-class mail, postage prepaid to the following:

Mark A. Stachiw
AirTouch Paging
Three Forest Drive
Suite 800
Dallas, TX 75251

John M. Lambros
Kecia Boney Lewis
Lisa B. Smith
MCI WorldCom, Inc.
1801 Pennsylvania Avenue, N.W
Washington, DC 20006

Richard M. Sbaratta
M. Robert Sutherland
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Joseph DiBella
Bell Atlantic Telephone Companies
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Alfred G. Richter, Jr.
Roger K. Toppins
Gary L. Phillips
SBC Communications, Inc.
1401 Eye Street, N.W.
Suite 1100
Washington, DC 20005

David L. Lawson
Daniel Meron
Christopher T. Shenk
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006

Mark C. Rosenblum
Stephen C. Garavito
Room 1131M1
295 Maple Avenue
Basking Ridge, NJ 07920

Eric J. Branfman
Emily M. Williams
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, DC 20007

Richard Metzger
Focal Communications Corp
7799 Leesburg Pike
Suite 850 N
Falls Church, VA 22043

William P. Hunt
Michael R. Romano
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Kent F. Heyman
Francis D.R. Coleman
Richard E. Heatter
MGC Communications, Inc.
171 Sully's Trail
Suite 202
Pittsford, NY 14534

John B. Glicksman
Adelphia Business Solutions
500 Thomas Street
DDI Plaza II, Suite 400
Bridgeville, PA 15017

Christopher A. Holt
CoreComm Incorporated
110 East 59th Street
26th Floor
New York, NY 10022

Jonathan Askin
Association for Local Telecommunications Services
888 17th Street, N.W.
Suite 900
Washington, DC 20006

Robert S. Tanner
Dale Dixon
Davis Wright Tremaine LLP
1500 K Street, N.W.
Suite 450
Washington, DC 20005

Richard M. Rindler
Kevin D. Minsky
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

David A. Miller
VoiceStream Wireless Corporation
3650 131st Avenue S.E.
Suite 200
Bellevue, WA 98006

Douglas G. Bonner
Sana D. Coleman
Arent Fox Kinter Plotkin & Kahn PLLC
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339

Carol Ann Bischoff
Jonathan D. Lee
The Competitive Telecommunications Association
1900 M Street, N.W.
Suite 800
Washington, DC 20036

Glenda Cafer
Eva Powers
Brett Lawson
State Corporation Commission of the State of Kansas
1500 SW Arrowhead
Topeka, KS 66604

Marilyn Showalter
Richard Hemstad
William R. Gillis
Washington Utilities and Transportation Commission
1400 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

Pat Wood, III
Judy Walsh
Brett A. Perlman
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

Ernest G. Johnson
Public Utility Division
Oklahoma Corporation Commission
P.O. Box 52000-2000
Oklahoma City, OK 73152-2000

Veronica M. Ahern
Nixon Peabody LLP
One Thomas Circle, N.W.
Suite 700
Washington, DC 20005

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W.
Suite 701
Washington, DC 20006

Christopher W. Savage
Heidi C. Pearlman
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006

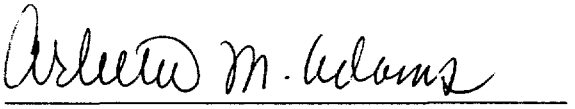
William J. Rooney, Jr.
General Counsel, Global NAPs Inc.
Ten Merrymount Road
Quincy, MA 02169

Stephen C. Roderick
Universal Telecom Inc.
1600 SW Western Blvd., Suite 290
Corvallis, OR 97333

Mickey S. Moon
William Gault
Williams Local Network, Inc.
One Williams Center
Tulsa, OK 74172

E. Ashton Johnston
Vincent M. Paladini
Piper Marbury Rudnick & Wolfe LLP
1200 19th Street, N.W.
Washington, DC 20036

Wisconsin Public Service Commission
P.O. Box 7854
Madison, WI 53707-7854



Arlethea M. Adams